Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-527

CHARLES W. RAMSEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

REPLY TO MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The Government's response herein concedes, as it must, that the requisite "information" for enhanced penalties was not *filed* until the trial was in its 10th day. (November 22, 1974 to December 2, 1974)

Although the "Record and Index of Record" which contained the facts of Petitioner's prior conviction was prepared by the prosecutor and seen by defense counsel and the court prior to trial, that does not mean — as Respondent seems to suggest at page 4 of its Opposition — that Petitioner *agreed* he was subject to an enhanced penalty. In addition to the fact that no such agreement was entered into, this barely liminal argument indicates little familiarity with the realities of trial court practice *i.e.*, that a prosecutor is required to meet the literal terms of 21 U.S.C. 851

(a)(1) at his peril — a defendant does not agree to nor does the statute require that he so agree to receive an additional fifteen years in jail. The "Record and Index of Record" seen by the parties prior to trial was but a working document which was retyped prior to its actual filing ten days later. This retyping and rewording is revealed by the very terms of the filed document itself which concludes, that the court ordered the presence of the defendants "at all subsequent stages of the trial to include this date, Monday, December 2, 1974." (Pet. at 4d.) One reason the statute requires these informations to be filed pretrial, is so that there is an undisputed factual record of the basis for enhancement — a factual record that nowhere appears herein even though respondent predicates its entire "form over substance" argument on this pretrial information never filed in its original form.

Furthermore, it is not entirely uncommon for an already typed enhancement information not to be filed by the Government as the result of further negotiations between the parties. At best, the prosecutor herein demonstrated a pretrial intention to file an enhancement information which he never did timely file. Accordingly, nothing that Respondent has said in its Opposition has dissuaded us from our firm belief that Petitioner is presently serving an illegal 30 year sentence, or that the enhancement statute is at times improperly utilized in the federal district courts.

Respectfully submitted,

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February 1978